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UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

The People Of The United States Of America
On The Relation Of Michael Hamilton
#17072-057

Petitioner

1: CV-01-0039

Civil No# _____

V

Mr R.M. Reish, Warden Of F.C.I. Schuylkill

Respondent.

FILED
CORANTON

JAN 10 2001

DEPUTY CLERK

AFFIDAVIT IS ASSERTED
Under Penalty Of Perjury

I Michael Hamilton with Reg# 17072-057 am the Petitioner in the above captioned case, do here by declare and certify under penalty of perjury that the statement and decaration are both true and correct as executed on this November 10, 2000

These specific usurps were pulled ~~from~~ the actual 1986 and 1995 crack hearing held by congress and the senate pursuant to West's citation and is over seventy-five pages to one-hundred and forty pages in length in it's original form. Since the hearing are on smaller than nine (9) point print and hard to read and sort through Petitioner has cited the relevant portion and put them on one document based on their respective years for two (2) Exhibits.

1. Congress concerned itself primarily with one specific type of cocain, that type with a chemical mixture of cocain, hydrochloride and sodium bicarbon-

ate (also known as baking soda). Crack is made by heating the chemical mixture for ten minutes in a microwave or oven. Exh. 1 § II.C.1-6, pp. 8 Exh. 2 § I.C. 1-3, p. 5.

2. Then Congress showed their intent as to how distinctly different "crack" was from cocaine to warrant the 100-1 ratio, from powder cocaine. Exh. 1 § II.A. 2, 8, 13-15, pp. 1-3; § II.C and D, pp. 8-10 and 5-6 respectively.

3. It was thought by Congress, that this distinction was so significant, that moving "crack" to Schedule I as a most severe controlled substance was warranted. See 21 U.S.C. § 812 ~~and compare~~ it with Exh. I § II.A.13-16, p. 3.

4. Though this significance was insufficient to sway the majority Congress to statutorily punish more severe under Schedule I from cocaine powder under the Schedule II, the mixture significance was the common denominator too the equation of arriving at their answer to harshly punish those who use or manufacture "crack" cocaine. Id.; and § II.A.20, p. 4.

5. Some Congressional members were able to signify that their distinction was for the poor minority neighborhoods as the specific targeted group they were allegedly creating this legislation to help clean-up. Exh. 2 § II.B.8, p. 3; and Exh. 1 § II.B, pp. 7-8; and § I.B.3, p. 2 respectively.

6. During this legislative debate, some Congressional members recognized that to so target a single entity, group or ethnic culture acting as a minority to dislodge this mandatory minimum, was usurping the trilogy of American Jurisprudence contrary to the Separation of Powers. Exh. 2 § I.A.1-5, p. 1.

7. After obtaining copies of Petitioner's lawyer's notes, it became very obvious that he had first hand knowledge of Constitutional rights that should have raised but he ignored instead. These errors were neither minor alone or

found this was an areas that was being unfarily, unconsciounably impacted by crack cocaine, as it is today. Id.

5. There was no racist motivation at all. As a matter of fact, it was a question of trying to save the **minority neighborhoods** from this awful curse that had gone all across this country, and it is not only confined in the **minority areas**. Id.

6. I would close by just saying to the gentlemen that the inner-city neighborhoods, are the most fragile in the entire country. There are the ones where we have to rid the neighborhood of the drug dealer. I think we must all work together to see this does not happen. H10261.

7. [W]hat has happened in the sentencing disparity, is that more African-American and Hispanics minorities in poorer neighborhoods have been deliberately targeted. Id.

8. Minorities represent an average of 96 percent of those prosecuted for crack cocaine nationally in Federal courts from 1992 to 1994. This is a fairness issue. Id.

9. I do not know how it is in California, but I can tell you that in Dade County, in Brownard County, and Palm Beach County that I represent, and as matter of fact right here in this Nation's Capital in the minority areas, they are saying come in and arrest the drug traffickers, get them out of our neighborhoods and get the crimes out of their streets so again they can walk their street.

10. That is the voice of minorities in the areas that are responsible who want to get their areas up out of poverty, get out of the gutter, get the problems out of their neighborhoods and get the crimes out of their streets

so again they can walk their streets and sit on their front porch and . . . enjoy life. Id.

11. Mr. Speaker, I tell the gentleman (Mr. SHAW), no black leader has said to him; Lock up our kids and have this disparity in law. Nobody said that to the gentleman. Id.

12. The coca leaf is not grown here. We do not see a lot of African-American young people from Philadelphia or Watts flying those fancy oar planes or speedboats across the ocean bringing this cocaine in here. To have a disparity in which we make crack more evil than powder cocaine, when one needs the powder to make the crack is assinine. H10263.

13. Crack cocaine happens to be used by poor people who are predominately black people because it is cheap. Powder cocaine happens to be used by white people who happen to be richer; and as a consequence you get this disparity in the application of the law. H10266.

14. Five-year mandatory minimum for users and small-time dealers with a couple of hundred dollars worth, [who are] 95 percent **black** and **Hispanic**. Street dealers [who] will be replaced as soon as they get arrested. Those distributing tens of thousands of uncooked crack or pre-crack of powder can get probation, a group 75 percent white. H10268.

15. The current sentencing guidelines are not affront to our professional notion of equality under the Moreover, the racial disparity in sentencing of crack cocaine offenders is unacceptable. Id.

16. The statistics show that 88 percent of the convictions for crack cocaine are **against** African-Americans. In the city of Los Angeles, no white American has been convicted of a crack offense in 1986. H10270.

17. U.S. population of African-Americans by percentage is 12 percent. The . . . monthly drug users who are African-Americans, is 13 percent [of that 12 percent]. African-Americans arrested for drug use [is] 35 percent of all those arrested. But 13 percent are drug users [with] 35 percent arrested. H10278. Next and most important of those stats are; 55 percent [with] prison sentences [of] 74 percent of that 55 percent.

18. The bill was shot down with the score of Ayes being 96 and the Nays being 316 by electronic vote. H10281.

19. **Those people** ought to be punished more because it was **those people** who are going into the gounsing projects where our **black** youth are being killed. And those mothers tell me to get those off the streets and put them away for a long period of time. H10269.

C. Mixture Of Congressional Concern

1. Crack cocaine is 30 minutes of baking of powder cocaine. This is all it is. You put it in the oven and it comes out the out the other end crack cocaine. H10286.

2. I said in an earlier debate, here on the floor, I made a mistake. I said it is 30 minutes to get from powder cocaine to crack cocaine, I was corrected. It is actually 10 minutes. I am told that if you put a tablespoon of **baking soda** with powder cocaine and you put it in a microwave and bake it for 10 minutes, that converts it to crack cocaine. H10286.

3. Mr. Chaiman, crack cocaine is minutes away from being powder cocaine. What you are really doing by protecting powder cocaine, which is what the other side is really doing . . . is that they are protecting the entrepreneurs. They take the powder cocaine and cook it up and can sell it. H102670, 10270.

D. Effects And Habits Caused

I just want to make the point, as much as I wish it were changed, as the gentleman from North Carolina is suggesting, I see in the crime subcommittee the **same statistics today as when the law was passed.** _____

_____**END OF EXHIBIT**_____

TABLE OF EXHIBITS
FOR THE AFFIDAVIT

DOC	DOCUMENT DISCRIPTION
1.	1986 CONGRESS/ SENATE CRACK HEARING SYNOPSIS
2.	1995 CONGRESS/ SENATE CRACK HEARING SYNOPSIS

**1986 CRACK HEARINGS
Congressional Records
Proceedings And Debates
99th Congress, 2d Session**

§ I. DEFINITIONS

For the purpose of this Act, the term 'freebase' is the conversion of cocaine crystals into a smokable form of the drug. Congressional Record - Senate 4670 (Cited as S-4670 hereafter), dated 22 April 1986.

§ II. DEBATES ON CRACK

A. Concerns

1. As chairman of the Select Committee on Narcotics Abuse Control, brought to the attention of our colleagues on article by Peter KERR that appeared in the March 20, 1986, New York Times, entitled 'Extra-Potent Cocaine: Use Rising Sharply Among Teen Agers,' 132 Cong.Rec. E944-01, 99th Congress, 2d Session dated 21 March 1986, as cited from West's 1979, p. 62 (Cited as E944-01, p. 62 hereinafter). Honorable (Hon.) Charles B. RANGEL, New York.

2. Crack is purified cocaine in pellet form that sells in vials for as little as \$5. Users smoke it, crating a powerful stimulating effect on the nervous system. Unlike regular cocaine, crack takes effect in seconds and includes a greater high, experts say. E994-01, p. 63.

3. "Rock houses," where the drug is sold but not smoked, also appearing in all kinds of neighborhoods. Police said such operations are numerous and so mobile that offices cannot estimate their numbers. S4670-71.

4. Whether cocaine rocks are sold by a dealer on a street corner or in rock house, it usually is a "quick exchange." Tucker said, "You're there. You give them a twenty. Bam, they drop a rock in your hand. You're gone." S4671.

5. People are starting to sell rocks from behind doors opened only as much as safety chains will allow, police . . . said. [For] Police breaking into these units recently have been finding mostly Haitian women with a roomful of children. That's bad for police. S4673.

6. You'd be surprised when people get hooked on that stuff, what they'll do. They'll sell their wives. I had girls come up to me and give me (sex) just for a rock. No big deal. Id.

7. "I don't think the solution is to give everybody more time and put people in jail. I believe Florida puts more people in jail than 47 other states and yet our crime rate is no lower than anybody else's" Palm Beach County Circuit judge. S4675.

8. The new cocaine distillate that makes many other drugs look like candy by comparison. The most recent . . . stories on the deadly drug appears in this week's Newsweek. S7123-01, West 1997, p. 81; Mrs. HAWKINS.

9. There should be no mistake, crack is dangerous not only because of the effect it has on the user, but also because of the crime it engenders. The Newsweek dated 16 June 1986 is printed in the record. Id.

10. The crack trade operates like a guerrilla insurgency and makes an infuriating elusive target for police. Dealers - 'ounce men,' as they are known in L.A. — organize small cells of pushers, couriers and lookouts from the ghetto's legion of unemployed teenagers. S7123-01, p. 82.

11. The most frightening aspect of the crack problem is its exponential growth. In March Sen. Lawton CHILES convened a meeting of local police officials in Florida to discuss the spread of "designer drugs" and was startled to find his audience leargely unconcerned by exotic hallucingens. He found that crack was

on everyone's mind,' an aide says. S7123-01, p. 84.

12. Mr. President, 6 months ago, I did not know about the dangers of rock and crack cocaine. I did not even know what they were. Today, I consider it the No. 1 drug problem in the Nation and I am not alone. 00000-22, 17 June 1986, West 1997, p. 75 (Cited as S00000-22, p. 75).

13. The nuggets are 'rocks.' The slithers are 'crack.' The very potent nature of this rock and crack is the reason I am introducing a bill to place cocaine freebase in Schedule I of the Controlled Substances Act. Id.

14. This step would elevate the drug into the most dangerous class of narcotics and thereby increase the penalties for federal violations involving rock and crack. Id.

15. To be listed in schedule I of the Controlled Substance Act a narcotic must First have potential for abuse; second, have no known medical use; and third, have a lack of accepted safety for use under medical supervision. S00000-22, p. 76, Senator CHILES, Florida.

16. Florida police tell me when they moved Quaaludes -methaqualone - up to schedule I, it almost disappeared in the streets. I am hoping this might happen with rock and crack. Id.

17. Mr. President, it is time that we begin to punish cocaine and crack dealers as severely as we punish heroin dealers. Currently, cocaine dealers are not subject to the maximum penalties available under 21 U.S.C. § 841(b) and § 960(b) unless they are in trafficking in, importing, or exporting at least a kilogram (1000 grams or 2.2 lbs.) of cocaine. S8091-06, dated 20 June 1986, West 1997, p. 140 (Cited as S8091-06, p. 140 hereafter), by Senators D'Amato and MATTINGLY.

18. This amount is unreasonably high. It offers those who prey on our children and our communities a safe haven that they simply do not deserve. Id.

19. When 4 or 5 million Americans are regular users of cocaine, when 1 of 6 high school seniors has tried cocaine at least once, and when an epidemic of crack abuse is causing violent crime to increase dramatically in communities across this country, it is time to stop treating cocaine as anything less than an urgent drug law enforcement priority. Id.

20. This bill creates, for the very first time, a special penalty applicable to crack. Because crack is so potent, drug dealers need to carry much smaller quantities of crack than of cocaine powder. By treating 1,000 grams of free-base cocaine no more seriously than 1,000 grams of cocaine powder . . . current law provides a loophole that actually encourages drug dealers to sell the more deadly and addictive substance, and lets them sell thousands of doses without facing the maximum penalty possible. S8091-06, p. 141.

21. My bill recognizes this fact and would trigger maximum penalties for dealing in just a 15 dose amount of crack (1 gram), enough to get about five people addicted to the drug for life. These penalties would be 20 years in prison, or a \$250,000 fine, or both, for a first time crack dealer, and double the penalty for repeat offenders. E2328-01, dated 26 June 1986, West 1997, p. 58-49 (cited as E2328-01, p. 58-59 hereinafter), Hon. Mario BIAGGI of New York.

22. My bill would also provide though, enhanced penalties for crack traffickers who conduct business near schools, and who hire young people to do their dirty work — a common practice in the crack trade. S2328-01, P. 59.

23. Mr. Speaker, the simple fact is that our Nation's drug laws were not written with the crack crisis in mind — a crisis that has resulted from a very small amount of drugs being able to inflict devastating damage. Id.

24. Across our Nation, new and highly addictive forms of 'cocaine-crack' and 'rock' - are resulting in a quantum leap in cocaine use, and a dramatic increase in cocaine related deaths. This was dramatically brought home to Americans with the recent deaths of basketball star Len BIAS and professional football player Don ROGERS from cocaine overdoses. The most disturbing finding is that young people are the fastest growing new users of cocaine. E2587-01, dated 24 July 86, West 1997, p. 198 (Cited as E2587-01, p. 198 hereinafter).

25. Mr. Speaker, this tragic drug epidemic is affecting all Americans, not only those who use illegal drugs. Rampant drug use increases the danger on our highways, increases crime in our cities, and destroys families and homes throughout our Nation. Id.

26. In 1984, Federal Drug Enforcement Administration agents were seizing an average of 48 pounds of cocaine a month. That figure jumped to 275 pounds in 1985 and it is still higher for 1986. Earlier this year in the city of Los Angeles alone, three unrelated seizures in less than 1 week resulted in the capture of 790 pounds of cocaine. Id.

27. We are at war with international drug dealers. It is infinitely more effective to stop drugs where they are grown and produced than to wait until they are in the United States. E2587-01, p. 199.

28. Mr. President, Senator BIDEN and I are introducing today a package of legislation which addresses the growing emergency of crack cocaine. Crack cocaine and its lethal effects are an epidemic in this country. With the opening of a new school year upon us, it is imperative that the Congress take immediate and decisive action. S10425-05, dated 5 Aug. 86, West 1997, p. 3 (cited as S10425-05, p. 3 hereinafter), Mr. CHILES of Florida.

29. Crack is available to the young, and it will be in the schools this fall. Police have told me horror story after horror story involving children as young as nine who are already crack users. The dealers and traffickers also use the young as lookouts and workers in crack houses. This cannot be tolerated. S10425-05, p. 4.

30. Crack is a growing plague. It requires emergency action on all fronts. That is the purpose of the bills we are introducing today. They address the crack cocaine emergency in terms of law enforcement, education, and health and prevention. Id.

31. Out Bills move cocaine freebase to schedule I of the Controlled Substance Act and decrease to 5 grams the amount required for enhanced penalties to apply. S10425-05, p. 4.

32. The stiffest penalties for possession of cocaine apply for possession of cocaine. A kilo is enough to produce as much as 25,000 rocks. The kilo limit imposes no difficulties on the traffickers and dealers. Id.

B. Racial Determinations

1. Most of the dealers, as with past drug trends, are black and Hispanics, police said. Haitians also comprise a large number of those selling cocaine rocks, authorities said. That's new and disconcerting, police said, because they previously had not seen Haitians selling drugs. Whites rarely sell the cocaine rocks. S4670.

2. Street sales of cocaine rocks have occurred in the same neighborhoods where other drugs: run-down, **black neighborhoods** from Delray Beach to Fort Pierce. But the market also is creeping into other neighborhoods. Id.

3. An interracial neighborhood east of Howard Park has become one of West Palm Beach's most highly visible cocaine rock areas. Less than a block from

where unsuspecting white retirees play tennis, bands of young black men push their rocks on passing motorists, interested or not. Id.

4. Lake Worth police Sgt. Grad CUMMINGS . . . said he 'used any excuse,' like noting a traffic violation, to stop a car carrying whites out of the black neighborhood where cocaine rock was sold. Then he would check the car for drugs. S4671.

5. Police have encountered several houses where Hispanics and Haitians sold cocaine rocks while surrounded by icons of Santeria, a Caribbean folk religion that mixes Catholicism and traditional African beliefs.

6. The police are loosing the war against crack, and . . . Dealers 'ounce-men,' as they are known in L.A. — organize small cells of pushers, couriers and lookouts from the ghetto's legion of unemployed teenagers. S7123-01, 82.

7. West 107th Street in Manhattan is a fringe neighborhood populated by low income blacks and Hispanics — and one of New York's open air drug markets. "one O-seven, you can get anything you want," says Juan, a skinny 19 year old. "You get crack, coke, herb, heroin. But crack's the thing. That's what's happening now." Id.

8. Selling crack is where the money is, where the action is and where the ghetto's social pecking order begins. 'Rock cocaine has taken on the social esteem that being a pimp had 20 years ago.

9. Houston police got grisly evidence of the New York connection in a double homicide last August. The victims, both Haitians from Brooklyn, were involved in a Jamician rock operations. 'The workers in the dope house are being recruited from poor Haitian and American Black kids in New York,' says Houston Police Sft. Steven CLAPPART, S7123-01, p. 84.

C. Mixture Of Congressional Concern

1. Cocaine hydrochloride, the powder form of the drugs usually is inhaled through the nose but can be taken orally or dissolved in a drink. S4670.

2. More than 70 percent of the cocaine users in Palm Beach County who have called the . . . Hot Line since it opened in November 2aid that regularly smoked cocaine as opposed to snorting or injecting it. Id.

3. They'd free-base the rock — smoke it by heating the rock, melting it down in a soft drink and inhaling the fumes. S4672.

4. The only equipment needed was two glass coffee pots, a hot plate, a pair of scales and a case of **baking soda**; baking soda is used as a reagent in the conversion process. S7123-01, p. 83.

5. Rock and crack cocaine are relatively new forms of cocaine which are freebase cocaine . . . whose hydrochloride has been released by heat. The heating of the cocaine with banking (sic) soda and water leaves a residue — this is cocaine freebase which is **almost a pure narcotic** and therefore lethal and potent. The residue paste is allowed to dry and then is broken up into nuggets or slithers for distribution. S00000-22, p. 75.

6. They take regular cocaine and they **mix** it with baking soda and water, apply heat and then they make rocks and out of it, little hard granules. They sell those for \$5 to \$10. You can make a pipe to smoke that out of a Coca-Cola can or a bear can. It gives a high that is 5 to 10 times more potent than heroin. 20000-22, p. 77; and S8091-06, p. 140.;and E2328-01, p. 58.

D. Effects And Habits Caused

1. A 15-year old boy, now in treatment at the Stony Lodge Hospital recalled how he . . . within a week . . . he was smoking \$50 worth of crack a day.

He began staying out of school . . . together with friends, began breaking into houses to take jewelry, case and video cassette recorders [and] was recently arrested on robbery charges and entered the treatment program. E-944-01, p. 64.

2. 'You are willing to do anything to get it,' he recalled. 'We just had to get more.' Id.

3. An ex-Marine, 25 and white . . . sold cocaine rocks out of his trendy townhouse in West Palm Beach for about six months [getting] for each piece of electronic equipment, he gave the buyer an inch-long rock for which he usually charged \$40. Then he sold the TV's and VCR's for \$150 to \$300 each. S4673.

4. 'You'd be surprised when people get hooked on that stuff, what they'll do. They'll sell their wives, I had girls come up to me and give me (sex) just for a rock. No big deal.' Id.

5. How fast the chemical reaches the brain depends on how it is taken — five to eight seconds when smoked, eight to 14 seconds when injected, two to four minutes when snorted, and five minutes when swallowed. S4676.

6. Teenage girls in New York City admit to selling their bodies daily to pay for their rock habits. Rock dealers in Tallahassee gave kids new bikes on the condition they would ride around the neighborhoods and alert them to police. S00000-22, p. 76.

7. Crack has been associated with lung damage, strokes, heart attacks, and death. It is also credited with one other side effect — crimes of violence. E2328-01, p. 58.

8. We have all heard of cocaine, but I must stress to you that **crack cocaine is something altogether different**. It is more powerful, it is cheaper to use; and it is also more addictive. S10425-05, p. 4. _____

END OF THIS SYNOPSISIZED EXHIBIT

**1995 CRACK HEARINGS
CONGRESSIONAL RECORDS
PROCEEDINGS AND DEBATES
104th CONG., 2d SESSION**

§ I. DEBATES ON CRACK

A. Concerns

1. The U.S. Sentencing Commission is not a biased body. It is comprised of prosecutors and judges from around this Nation. Congressional Record - House, p. H-10258 dated 18 Oct. 95 (Cited at H10258 hereinafter).

2. [W]hat the U.S. Sentencing Commission came to tell the Committee on the Judiciary was that this Nation has a problem. Our Federal judges are forced to be unfair with this cruel sentencing structure. The courts are unable to make decisions, that to punish, but do not sentence certain races of people more extreme than any other. Id.

3. Yet 5 grams of crack cocaine will get you a mandatory minimum penalty, whereas 500 grams of powder cocaine will get you a similar penalty. If somebody is convicted of selling \$225 worth of crack cocaine, they get the same penalty as somebody gets who sells "50,000.00 worth of powder cocaine. H10259.

4. Crack cocaine is the only drug that we have subject to a mandatory minimum sentence. Now, I am not going to stand here and argue that crack cocaine is not a serious drug, but it is no more serious than heroin. Id.

5. There is no mandatory minimum for heroin . . . LSD, Methamphetamine, you name it there is no other drug that has a mandatory minimum. And yet we have singled out crack cocaine for a 5-year mandatory minimum. Id.

6. Well, Mr. Speaker, I want to tell the gentlemen how it got into the law. It was an amendment I put into the law, and I put it when I was on

the Judiciary Committee. At that time I felt that it was a very important provision to be in the law. There was no racist motivation whatsoever in putting that in the law. H10260.

7. The U.S. Sentencing Commission was designed to take the politics out of criminal sentencing, to be bipartisan. Yet its judgment, based on years of experience and a responsibility to justice, is being summarily rejected in this bill. H10261.

8. When we usurp the sentencing guidelines, that means that we are saying that they do not know what they are doing. They have not studied this situation. Here we come in Congress and do some micromanaging from here, when we have not tested any of these theories. H10262.

B. Racial Determinations

1. We are not going to be fair. We are going to continue to send those living on street corners in inner-city America to their death by way of incarceration for 5 years and 10 years and 35 years, and those who are in Beverly Hills or somewhere else possessing. H10258.

2. The facts we have found are that 95 percent of those convicted of crack are **black** or **Hispanic**, although the majority of users are white. For powder, 75percent of those convicted of powder cocaine offenses are white. H10260.

3. As a matter of fact, it is a question of trying to save the **minority neighborhoods** from this awful curse, that had gone all across this country and it is not only confined in the minority areas. I will not suggest that. But it seemed that was where it was having its biggest impact, and this is where we had to go after the problem and this is why we did it. H10260.

4. We also found that where it was being used most, and where it was creating its worst problems were in **minority areas** because of the cheapness of it.

The afore said is factually true and correct and given under penalty of perjury. 28 U.S.C. § 1746

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